REMARKS

The Examiner rejected Claims 1-23 under 35 U.S.C. § 103(a) over U.S. Patent No.
6,304,892 to Bhoj et al. ("Bhoj") in view of U.S. Patent No. 5,951,694 to Choquier et al.
("Choquier"). The Examiner admitted that Bhoj does not explicitly teach classes of service but
maintains that "it would have been obvious to one of ordinary skill in the data processing arts at the
time the invention was made that Bhoj implicitly discloses the service management system 31a-33a
[which] defines or selects classes of back-end server [sic] (e.g., payroll, e-mail server host) based on
the data service components being managed (e.g., e-mail, printing . . .) (see figs. 1-2, 4-5, NEWS
SERVERS, E-MAIL SERVERS, WEB SERVER FARM, col. 9 lines 19 - col. 10 lines 7 [which is]
equivalent to the step of defining classes of back-end server [sic] that [is] disclosed in the
Applicants' specification."

Applicants respectfully submit that even if Bhoj implicitly discloses a service management
system that defines or selects classes of back-end servers based on the data service components
being managed (e.g., e-mail, printing . . .), this is irrelevant, because contrary to the Examiner's
characterization nothing in the Applicants' claims as originally filed or as amended or in the
Applicants' specification as originally filed or as amended includes the step of defining classes of
back-end servers. Applicants respectfully submit that the Examiner's assertion that the step of
defining classes of back-end servers is disclosed in Applicants' specification is erroneous because
Applicants' specification describes classes of service not classes of servers. Since services and
back-end servers are very different things, it is erroneous for the Examiner to assert that one
somehow teachers or suggests the other.

Applicants respectfully disagree with the Examiner's contention that "a person of ordinary
skill in the art would have recognized that Bhoj performed the same function in substantially the
same way to reach substantially the same results."

In addition to erroneously interchanging the word service with server, the Examiner's
indication that Bhoj discloses classes of back-end servers (e.g., payroll, printing, e-mail server host)
uses a different definition of the term "class" than a definition that is used and described in the

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present specification. The Examiner uses the word class in the context of a "functional type" of back-end server. Contrarily, the use of the term "class" in the present specification has nothing to do with functional type. Rather, "class" is used throughout the present specification to mean "service level class." For example, the present specification recites "(w)ithin a virtual site, definitions for classes are also created. Each class implies certain agreed to SLA metrics. For example, a "gold" class may be defined to require higher performance than a "silver" class. Similarly, a user is defined with no more than one class. An operator defines the acceptance parameters of a class by entering the class name, and assigning servers to service that class. Servers may also be reassigned by other web-farm entities as performance needs indicate. In addition, a class is defined by way of its subscribed error rate, response time, and bandwidth parameters." (Spec. p. 11 lines 13-21).

To make this distinction perfectly clear in the claims, each of the independent claims (claim 1, claim 6 and claim 9) are amended herein to include "defining service level classes." Applicants respectfully submit that nothing in Bhoj or any of the cited references teaches or suggests a step of "defining service level classes." Applicants submit that no new matter is added by the present invention because the term class is used consistently throughout the specification as filed to mean classes of service levels.

The Examiner indicated that Choquier teaches the different types of online services or class of online services, defining a set of parameters for each class of online service and store [sic] in the priority table that is contained [sic] priority levels (fig. 12, element 1220, col. 20, line 32 – col. 21, line 50).

Applicants respectfully submit that, contrary to the Examiner's characterization, Choquier describes a multiplexing scheme having a corresponding service priority scheme to allocate different amounts of bandwidth to different services. "This is preferably accomplished by assigning segment lengths to different online services based on predetermined and restored within service priority table 1220. The service priority table 1220 contains priority levels (in the form of maximum segment lengths) for each online service (or class of online service) . . . The service priority table may additionally include minimum throughput requirements for certain services. For

example, for an embodiment of the CHAT service that permits voice communications, the table 1220 could indicate a minimum throughput requirement of 7 kbps (to insure voice reproduction of a predetermined quality) . . ." (column 20, lines 36-54).

Accordingly, the term "class" is also used by Choquier as a synonym for "functional type" not a "service level class" as described and claimed in the present application. Even though Choquier describes that the priority table 1220 could indicate a minimum throughput requirement, this requirement is service specific or functional type specific, i.e., it is associated in the example with a CHAT service, and is not service level specific. Accordingly, Applicants respectfully submit that Choquier alone or combined with Bhoj does not teach or suggest service level classes of service as claimed in each of the independent claims (claims 1, 6 and 9) of the present application. Applicants also reiterate that service level classes are distinct from service levels of a service level agreement. For example, each class implies <u>certain</u> agreed to SLA metrics and are defined distinctly from the service level agreement (specification, page 11, lines 14-16).

Applicants respectfully submit that the Examiner's rejections of each of the dependent claims in view of Bhoj and Choquier include additional mischaracterizations of the references. For example, in paragraph 22, the Examiner rejects claim 21 over Bhoj in view of Choquier and erroneously asserts that Choquier teaches "wherein said class defines a hierarchy of service levels (column 6, lines 8-31)." Contrary to the Examiner's characterization, the referenced portion of Choquier describes different types of services and a hierarchy of different services but does not teach or suggest a hierarchy of service levels as claimed in claim 21.

Since neither Bhoj nor Choquier alone or combined teach or suggest each and every element of any of the independent claims in the present application, Applicants respectfully submit that the Examiner has not made out a prima facia case of obviousness under 35 U.S.C. § 103(a) with respect to any of the claims (1-23) pending in the present application. Accordingly, Applicants respectfully submit that each of the rejections under 35 U.S.C. § 103(a) are improper and should be withdrawn. Reconsideration and withdrawal of the rejections is respectfully requested.
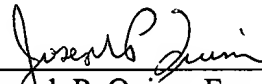
In view of the foregoing amendments and remarks, it is respectfully submitted that claims 1-23 presently pending in the application are believed to be in condition for allowance and patentably distinguish over the art of record. An early notice thereof is earnestly solicited. If the Examiner should leave any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to contact the Applicant's undersigned attorney.

CONCLUSION

Please charge any deficiency as well as any other fees that may become due at any time during the pendency of this application, or credit any over payment of such fees to deposit account no. 50-0369. Also, in the event that any extensions of time for responding are required for the pending application, please treat this paper as a petition to extend the time as required and charge deposit account no. 50-0369 therefore.

Respectfully submitted,

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Joseph P. Quinn, Esq.
Reg. No. 45,029
Customer No. 21710
Attorney for Applicants

BROWN RUDNICK BERLACK ISRAELS LLP
Box IP
One Financial Center
Boston, MA 02111
Tel: 1-617-856-8396
Fax: 1-617 856-8201

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